

**WESTERN STATES CONTRACTING ALLIANCE
PARTICIPATING ADDENDUM #AR214
FOR DATA COMMUNICATIONS EQUIPMENT
BETWEEN
THE STATE OF WASHINGTON, DEPARTMENT OF INFORMATION SERVICES
AND
Foundry Networks, Inc.**

This Participating Addendum ("PA") is entered into between the State of Washington, Department of Information Services ("DIS" or "State") and Foundry Networks, Inc. ("Contractor" or "Foundry"), under the Western States Contracting Alliance ("WSCA") Master Price Agreement Number AR214 ("Master Agreement") for data communications equipment and associated maintenance and training. The State is a member of WSCA (a "Participating State") and, upon Foundry's acceptance and execution of this PA, will become a Participating Entity (as defined in Attachment 1 to this PA) under the Master Agreement.

The undersigned hereby represent, acknowledge, and agree as follows:

1. **Scope:** This PA is entered into for the purpose of making the data communications equipment and associated maintenance and training available under the Master Agreement available to Washington State Purchasers. Services provided hereunder shall be limited to Purchased Services (as defined in Attachment 1 to this PA). All other types of services are expressly excluded from the scope of this PA.
2. Changes to the Master Agreement specific to the State of Washington are specified in the Attachment(s) to this PA, incorporated herein by this reference. In the event of any inconsistency between this PA and the Master Agreement, the inconsistency shall be resolved by giving precedence to the terms and conditions of this PA for all Orders (as defined in Attachment 1) placed under it.
3. **Primary Contact/ Legal Notices:**
 - 3.1. Any notice or demand or other communication required or permitted to be given under this PA or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the parties at the addresses provided in this section. For purposes of complying with any provision in this PA or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.
 - 3.2. Notices shall be effective upon receipt or five (5) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.
 - 3.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided pursuant to this PA is served upon Foundry Networks, Inc. or Participating Entity, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Foundry Networks, Inc. and Participating Entity further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.
 - 3.4. For Participating Entity:

State of Washington Department of Information Services	
Attn: Master Contract Administrator	
Mailing Address:	Street Address:
PO Box 42445	1110 Jefferson Street SE
Olympia, WA 98504	Olympia, WA 98504
Phone: (360) 902-3551	
Fax: (360) 586-1414	
E-mail: mcadmin@dis.wa.gov	

3.5. For Foundry Networks, Inc.:

Foundry Networks, Inc.	
Attn: Rich LeSueur	
Mailing Address:	
2100 Gold St.	
Alviso, CA 95002	
Phone: (801) 254-3744	
Fax: (801) 254-7233	Email: rlesueur@foundrynet.com

4. This PA together with its Attachment 1 hereto and together with the Master Agreement and its Attachments A and B-1, (administered by the State of Utah), sets forth the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Additionally, the Utah State Procurement Code and Procurement Rules referenced in Section 6b of the Cover Page (State of Utah Contract Signature Page) of the Master Agreement are expressly excluded. Terms and conditions inconsistent with, contrary to, or in addition to the terms and conditions of this PA and the Master Agreement shall not be added to or incorporated into this PA or the Master Agreement, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this PA shall prevail and govern over any and all such inconsistent or additional terms. All Orders (as defined in Attachment 1) issued by Purchasers (as defined in Attachment 1) within the jurisdiction of this PA shall include the terms of this PA and reference the PA Number AR214.

IN WITNESS WHEREOF, the parties have executed this PA as of the date of execution by both parties below.

Approved
State of Washington
Department of Information Services



Signature
Roland Rivera

Print or Type Name
TSD Assistant Director

Title
12/20/07

Date

Approved
Foundry Networks, Inc.



Signature
Tom Gemeth

Print or Type Name
Corporate Controller

Title
12/12/07

Date

Approved as to Form
State of Washington
Office of the Attorney General

Signature
Suzanne Shaw

Print or Type Name
Senior Counsel, AGO

Title

Date

Contractor Information
Contractor's UBI Number:
Minority or Woman Owned Business Enterprise
Yes No <input checked="" type="checkbox"/> (Certification Number)

ATTACHMENT 1
WESTERN STATES CONTRACTING ALLIANCE
PARTICIPATING ADDENDUM
FOR
DATA COMMUNICATIONS PRODUCT
BETWEEN
THE STATE OF WASHINGTON, DEPARTMENT OF INFORMATION SERVICES
AND
Foundry Networks, Inc.

1. DEFINITIONS.

“Acceptance Date” shall mean: (i) for Contractor-installed Products or Products undergoing formal acceptance testing, the date of Purchaser’s written notification to Contractor of acceptance of the Products; (ii) for other Products, the tenth (10th) Business Day after the date of delivery.

“Confidential Information” shall mean information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, Purchaser source code, Purchaser network configuration information, or other information which is marked confidential at the time of disclosure.

“Contractor” shall mean Foundry Networks, Inc., its employees and agents. It shall also include any Subcontractor retained by Contractor as permitted under the terms of this PA.

“Customer” shall mean the same as Purchaser.

“DIS” shall mean the State of Washington, Department of Information Services.

“Effective Date” shall mean the first date this PA is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this PA.

“Order Document”/“Order” shall mean any official State document and attachments thereto specifying Products and Services to be purchased or licensed from Contractor under this PA. Each Order shall specify on its face the types and quantities of Products and/or Services to be furnished by Contractor pursuant to the Order, the delivery date(s), and the installation site(s).

“Participating Addendum” or “PA” shall mean this agreement between the Contractor and the State of Washington, a Participating State, that clarifies the operation of the Master Agreement and may add other state-specific language or other requirements.

“Participating Entity” shall mean a member of WSCA who has indicated its intent to participate, as disclosed in the solicitation, or who subsequently signs a PA.

“Procuring Agency(ies)” shall mean the same as Purchaser.

“Product(s)” shall mean data communications equipment, specifically, Foundry Networks, Inc. switches, routers, associated components, support, software and documentation.

“Proprietary Information” shall mean information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by United States copyright, patent, trademark, or trade secret laws.

“Purchased Services” means services provided to accomplish routine, continuing and necessary functions as defined in the Revised Code of Washington 39.29.06(9).

“**Purchaser**” shall mean DIS or any other state agency, or political subdivision (including public schools, colleges or universities), or qualified non-profit organization of the state of Washington, who have a properly executed Interlocal Cooperative Agreement (Customer Service Agreement) with DIS.

“**Purchasing Entity(ies)**” shall mean the same as Purchaser.

“**Service(s)**” shall mean installation, training and maintenance services for eligible Products. Services provided hereunder shall be limited to Purchased Services only. All other types of services are expressly excluded from this PA.

“**Subcontractor**” shall mean one not in the employment of Contractor, who is performing all or part of the business activities under this PA under a separate contract with Contractor. The term “Subcontractor” means Subcontractor(s) of any tier.

2. ORDER OF PRECEDENCE. In the event of any inconsistency in this PA, the inconsistency shall be resolved in the following order of precedence:

- (i) Sections of this PA, including this Attachment 1;
- (ii) WSCA Master Agreement, Number AR214;
- (iii) Contractor’s Response to Request for Proposal (“RFP”) DG7500 (“Response”);
- (iv) Utah’s Request for Proposal DG7500;
- (v) The terms and conditions contained on Purchaser’s Order Documents.

3. ACCEPTANCE TESTING. Contractor agrees that Purchaser may choose to require formal acceptance testing on Products purchased under this PA. Such acceptance testing criteria shall be mutually negotiated and agreed to by both Purchaser and Contractor on an individual case basis. In that case, no payment will be authorized until the Product has met the standard of performance and has been accepted, in writing, by Purchaser.

4. TITLE. Upon receipt of payment Contractor shall convey Purchaser good title to any equipment, free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

5. OVERPAYMENTS TO CONTRACTOR. Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this PA within thirty (30) days’ of written notice. If Contractor fails to make timely refund, Purchaser may charge Contractor one percent (1%) per month on the amount due, until paid in full.

6. RECORDS ADMINISTRATION. The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this PA. These records will be retained by the Contractor for at least six (6) after the PA terminates, or until all audits or litigation initiated within the six (6) years have been completed, whichever is later.

7. SURVIVORSHIP. All license and purchase transactions executed and Services provided pursuant to the authority of this PA shall be bound by all of the terms, conditions, prices and discounts set forth within this PA or the Master Agreement, notwithstanding the expiration of the initial term of this PA or the Master Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this PA and the Master Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this PA or the Master Agreement shall so survive. In addition, the terms of the sections titled Contractor’s Commitments, Warranties and Representations; Protection of Purchaser’s Confidential Information; Order of Precedence; Publicity; and Disputes shall survive the termination of this PA.

8. ADVANCE PAYMENT PROHIBITED. No advance payment shall be made for Products and/or Services furnished by Contractor pursuant to this PA. Notwithstanding the above, payments for maintenance Services may be made in advance on a quarterly or annual basis, at Purchaser’s option.

9. TAXES. Purchaser will pay sales and use taxes, if any, imposed on the Products and/or Services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor’s income or gross receipts, or personal property taxes levied or assessed on

Contractor's personal property.

10. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS. Any written commitment by Contractor within the scope of this PA shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this PA. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time, and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

11. PROTECTION OF PURCHASER'S CONFIDENTIAL INFORMATION.

11.1 Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this PA or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes ("Confidential Information"). Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this PA, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this PA, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors reasonably necessary to further the purpose of this PA. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

11.2 Immediately upon expiration or termination of this PA, Contractor shall, at Purchaser's or DIS' option: (i) certify to Purchaser or DIS that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser or DIS requires of Contractor to protect Purchaser's Confidential Information.

11.3 DIS and Purchaser reserve the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this PA. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

11.4 Violation of this section by Contractor or its Subcontractors may result in termination of this PA and demand for return of all Confidential Information, monetary damages, or penalties.

11.5 The obligations imposed by this PA shall not apply to any information that: (a) is already in the possession of, is known to, or is independently developed by Contractor; or (b) is or becomes publicly available through no fault of Contractor; or (c) is obtained by Contractor from a third person without breach by such third person of an obligation of confidence with respect to the Confidential Information disclosed; or (d) is disclosed without restriction by the Purchaser; or (e) is required to be disclosed pursuant to the lawful order of a government agency or disclosure is required by operation of the law.

12. PUBLICITY.

12.1 The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's Services by Purchasers and shall not be so construed by Contractor in any advertising or other publicity materials.

12.2 Contractor agrees to submit to DIS, all advertising, sales promotion, and other publicity materials relating to this PA and Services furnished by Contractor wherein DIS' or Purchaser's name is mentioned, language is used, or Internet links are provided from which the connection of DIS' or Purchaser's name therewith may, in DIS' or Purchaser's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of DIS *prior* to such use.

- 12.3 Nothing contained in this Section, however, shall be construed to apply to the following: Communications among Purchasers or communications between Purchasers and other agencies and branches of the Washington State Government; and posting by DIS of a copy of this contract on its website(s), together with a notation identifying Vendor as a supplier for the Services.

13. INSURANCE COVERAGE.

- 13.1. Contractor shall, during the term of this PA, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington
- 13.2. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this PA, Contractor shall provide written notice of such to DIS within thirty (30) Business Days of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at DIS' sole option, result in this PA's termination.
- 13.3. The minimum acceptable limits shall be as indicated below:
- Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
 - Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
 - Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
 - Umbrella policy providing excess limits over the primary policies in an amount not less than \$1 million;
- 13.4. Contractor shall pay premiums on all insurance policies. Such insurance policies certificate(s) shall name DIS as an additional insured on all general liability, automobile liability and umbrella policies. Such insurance certificates shall also reference the Master Agreement number AR214, and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to DIS by the insurer.
- 13.5. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State subject to the hold harmless/ indemnification agreements under this PA and shall include a severability of interests (cross-liability) provision.
- 13.6. Contractor shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.
- 13.7. Contractor shall furnish to DIS copies of certificates of all required insurance within thirty (30) calendar days of this PA's Effective Date, and copies of renewal certificates of all required insurance within thirty (30) days after the first business day in the month of April for each successive year that this PA or the Master Agreement is in full force and effect. Failure to provide evidence of coverage may, at DIS' sole option, result in this PA's termination.
- 13.8. By requiring insurance herein, DIS does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the State in this PA.

14. INDUSTRIAL INSURANCE COVERAGE. Prior to performing work under this PA, Contractor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this PA. DIS or Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for

Contractor, or any Subcontractor or employee of Contractor, which might arise under the industrial insurance laws during the performance of duties and Services under this PA.

15. WAIVER. Waiver of any breach of any term or condition of this PA shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this PA shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

16. DISPUTES.

16.1. In the event a bona fide dispute concerning a question of fact arises between Purchaser and Contractor and it cannot be resolved between the parties, or with the help of the Master Contract Administrator, either party may initiate the dispute resolution procedure provided herein.

16.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within five (5) business days. The initiating party shall have five (5) business days to review the response. If after this review a resolution cannot be reached, both parties shall have five (5) business days to negotiate in good faith to resolve the dispute.

- a) If the dispute cannot be resolved after five (5) business days, a panel ("Dispute Resolution Panel") may be requested in writing by either party who shall also identify the first panel member. Within five (5) business days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next five (5) business days.
- b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
- c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

16.3. Both parties agree to be bound by the determination of the Dispute Resolution Panel.

16.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible

16.5. Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this PA that are not affected by the dispute.

16.6. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Contractor, Contractor shall continue providing Services pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

17. DIS ADMINISTRATIVE FEE. All purchases made under this PA are subject to a fee ("DIS Administration Fee"), to be collected by Contractor and remitted to DIS. The DIS Administration Fee is one half of one percent (.5% or .005) of the purchase price. The purchase price is defined as total invoice price less sales tax. The DIS Administration Fee shall be invoiced by Contractor to all Purchasers as a separate detailed line item on Purchaser's invoice. Contractor shall remit the DIS Administration Fee directly to the Master Contract Administrator, along with the PA Activity Report. The check shall be payable to the Department of Information Services.

18. DIS NOTIFICATION. Within three (3) days of receipt of any inquiry from any other Washington State agency regarding possible purchase under this PA, Contractor shall provide the DIS Master Contract Administrator (see Section 3 of this PA) with notice including details of the inquiry, the name of the agency and the contact person for the agency. No notice to DIS is required for inquiries or Orders received from Washington educational entities or counties, cities or their political subdivisions.

19. DIS ACTIVITY REPORTING.

19.1. Contractor shall submit to the Master Contract Administrator a quarterly report (“Activity Report”) of all Product and/or Service purchases made under this PA. Quarterly reports are to be broken down by each month being reported. The Activity Report shall identify:

- a) The Participating Addendum (AR214);
- b) Each Purchaser making purchases during that quarter;
- c) The total invoice price, excluding sales tax for each Purchaser;
- d) The DIS Administration Fee for each Purchaser;
- e) The sum of all invoice prices, excluding sales tax, for all Purchasers; and
- f) The sum of all DIS Administration Fees.

19.2 The Activity Reports and the DIS Administration Fee shall be due on a quarterly basis in accordance with the following schedule:

<u>For activity in the months:</u>	<u>Report & Fee Due:</u>
January, February, March	April 15 th
April, May, June	July 15 th
July, August, September	October 15 th
October, November, December	January 15 th

19.3 This Activity Report may be corrected or modified by the Master Contract Administrator with subsequent written notice to Contractor. Quarterly Activity Reports are required even if no activity occurred. Upon request by DIS, Contractor shall provide, in the format requested, the contact information for all Purchasers during the term of the PA.

20. FAILURE TO REMIT REPORTS / FEES. Failure of Contractor to remit the Activity Report together with the DIS Administration Fee may be considered a failure to perform on the part of Contractor, which may result in DIS terminating this PA with Contractor.

21. INVOICE / PAYMENT.

21.1. Contractor will submit properly itemized invoices to each Purchaser within forty-five (45) days of delivery of Products and/or Services at the address(es) indicated in the Order Document. Invoices shall provide and itemize, as applicable:

- a) The Master Price Agreement number, AR214;
- b) Purchaser’s name and address and Order Document number;
- c) Contractor name, remittance address, phone number, e-mail address, fax number and Federal Taxpayer Identification Number;
- d) Description of Products, including price, quantity ordered, model and serial numbers;
- e) Date(s) of delivery and/or date(s) of installation and set up;
- f) Price for each item, or manufacturer’s list price for each item and applicable discounts;
- g) Description of Services provided, including dates;
- h) Net invoice price for each item;
- i) Applicable taxes;
- j) DIS Administration Fee (0.5% or 0.005 of the total purchase price);
- k) Other applicable charges;
- l) Total invoice price; and

m) Payment terms including any available prompt payment discounts.

21.2. Payment is normally made within thirty (30) days following the date the Order is received or the date a correct invoice is received, whichever is later. After forty-five (45) days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments may be remitted by mail, or via electronic funds transfer. Payments may be made via a Purchasing Entity's "Purchasing Card."

21.3. Payments for maintenance Services may be made in advance on a quarterly or annual basis, at Purchaser's option. Payment of maintenance Services of less than one (1) month's duration shall be prorated at 1/30th of the basic monthly maintenance charges for each calendar day.

22. TERMINATION FOR NON-APPROPRIATIONS. If funds are not allocated to a Purchaser to continue a maintenance agreement, Purchaser may terminate its maintenance agreement upon thirty (30) days' written notice to Contractor without termination charges, or otherwise work with Contractor to arrive at a mutually acceptable resolution of the situation. Purchaser agrees to notify Contractor in writing of such non-allocation at the earliest possible time. This section shall not be construed to permit a Purchaser to terminate its maintenance agreement in order to acquire similar Services from a third party.

23. GOVERNING LAW. This PA shall be governed in all respects by the law and statutes of the State of Washington, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act (UCITA) or any substantially similar law is enacted as part of the law of the State of Washington, said statute will not govern any aspect of this PA or any license granted hereunder, and instead the law as it existed prior to such enactment will govern. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the State of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

24. VENDOR'S PROPRIETARY INFORMATION. Contractor acknowledges that DIS and Purchaser are subject to chapter 42.56 RCW and that this PA shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be proprietary ("Proprietary Information") must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, DIS and Purchaser shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, DIS or Purchaser will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DIS or Purchaser will release the requested information on the date specified.

STATE OF UTAH - STATE COOPERATIVE CONTRACT

CONTRACT NUMBER AR214

1. CONTRACTING PARTIES: This State Cooperative Contract is between the **Division of Purchasing and General Services**, an agency of the State of Utah, and the following CONTRACTOR:

Foundry Networks, Inc.

Name

2100 Gold St.

Address

Alviso

CA

95002

City

State

Zip

LEGAL STATUS OF CONTRACTOR

- Sole Proprietor
 Non-Profit Corporation
 For-Profit Corporation
 Partnership
 Government Agency

Contact Person Rich LeSueur Phone #801-254-3744 Fax # 801-254-7233 Email rlesueur@foundrynet.com
Federal Tax ID# 77-0431154 Vendor #VC0000112454 Commodity Code #20464, 20623 & 20621

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide:

WSCA Contract to provide Data Communications Equipment Associated OEM Maintenance and Training per RFP #DG7500.

3. CONTRACT PERIOD: Effective date: June 1, 2007 Termination date: May 31, 2010 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): 2 -(2) year.

4. PRICING AS PER THE ATTACHMENT Discounts
PAYMENT TERMS: Net 30
DAYS REQUIRED FOR DELIVERY: 30 Days ARO
MINIMUM ORDER: None
FREIGHT TERMS: F.O.B. Destination - Freight Prepaid

5. ATTACHMENT A: Addendum 1
ATTACHMENT B-1: WSCA Terms and Conditions
ATTACHMENT B-2: N/A
ATTACHMENT C: N/A

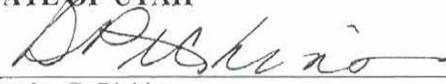
6. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
b. Utah State Procurement Code, Procurement Rules, and CONTRACTOR'S response to Bid #DG7500 dated 9/4/06.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

STATE OF UTAH


Contractor's Signature


Douglas G. Richins

Director, Div. of Purchasing & General Svs.

Neal Harris, Director, NW Region
Type or Print Name and Title

Date

5/13/07

Date

MAY 21 2007

ATTACHMENT A ADDENDUM 1

This Addendum serves to clarify terms and conditions of the contract between the State of Utah, referred to as STATE, and Foundry Networks referred to as Contractor. The State of Utah is acting as the Lead State for the procurement process resulting in **WSCA Contracts for Data Communications Equipment, associated OEM Maintenance and Training.**

A. Manufacturer Product Line(s)

This contract authorizes the Contractor to provide the following manufacturer's Data Communications Equipment, Maintenance, and Training, as listed by category. No other equipment or maintenance will be covered under this contract, unless identified in an amendment to the contract. Products covered under this agreement are:

Routers: Foundry
Switches: Foundry
LAN/WAN Wireless: Foundry
Network Management Software: Foundry
Optical Transport: Foundry
Security: Foundry
Training and Maintenance for Above Products: Foundry

B. State of Utah/WSCA Contract Manager

Debbie Gundersen
State of Utah
Division of Purchasing and General Services
State Office Building, Capitol Hill
Room 3150
Salt Lake City, UT 84114-1061

email: dgundersen@utah.gov
Voice: (801) 538-3150
Fax: (801) 538-3882

C. Remittance Address

4980 Great America Parkway
Santa Clara, CA 95054

D. Special Terms and Conditions

The parties agree to amend the terms and conditions as follows:

1. Order of Precedence
The order of precedence for the contract terms will be as follows:
 1. Attachment B-2: Changes to WSCA Terms and Conditions-**NO CHANGES**
 2. Attachment B-1: WSCA Terms and Conditions
 3. State of Utah Contract Signature Page (Cover Page)
 4. Attachment A: Addendum 1
 5. Contractor's Terms and Conditions, if applicable
 6. Contractor's Response to BAFO for RFP DG7500, incorporated by reference
 7. Contractor's Response to RFP DG7500, incorporated by reference
 8. RFP DG7500, incorporated by reference

2. Included Documents
The documents listed in Number 1 are included in the contract. It is agreed that any reference to the "Entire Agreement" includes these documents.

3. Public Information
The contract, including the price lists and the Response to the RFP, will be considered public documents and will be subject to government records policies in each state. The Contractor gives the STATE express permission to make copies of the information specified to provide to other STATE government entities that may use the contract, and to the public, in accordance with general STATE policies, including copies of said information that may be identified as confidential, proprietary, or copyrighted.

4. Arbitration
The STATE will not accept mandatory, binding arbitration. If there are any references to binding arbitration in the Contractor's Response to the RFP, they will be null and void. The parties may agree, on a case by case basis, to voluntary arbitration to resolve contract issues.

5. Contract Period
The contract period, including renewal options, is listed on the STATE OF UTAH - Statewide Contract cover page. Renewals will be agreed to upon written authorization from both parties. All references to automatic renewals will be null and void.

6. Governing Law
This procurement shall be governed and the resulting price agreement construed in accordance with the laws of the State of Utah. The construction and effect of any Participating Addendum or order against the price agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's State. Venue for any claim, dispute or action concerning the construction and effect of the price agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against the price agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's State.

E. Contractor Requirements

1. Contractor Responsibility
Contractor is solely responsible for fulfillment of the responsibilities under the terms and conditions of the contract. The procuring agencies will issue purchase orders and make payments to only the named contractors or their respective resellers.
2. Serving Subcontractors
If using servicing subcontractors for the performance of local marketing, maintenance and/or technical support services in accordance with the terms and conditions of the contract, servicing subcontractors may not directly accept purchase orders or payments for products or services from procuring agencies under the terms and conditions of the contract. The authorized procuring agency has the option of choosing whether to purchase the associated OEM maintenance and/or training to support the equipment purchased.
3. WSCA Administration Fee
The contractor must pay a WSCA administration fee of one half of one percent (.50%) in accordance with the terms and conditions of the contract. The WSCA administration fee is not negotiable.
4. Usage Reporting Requirement
Contractor must submit quarterly usage reports to the contract manager. Initiation and submission of the quarterly report is the responsibility of the contractor without prompting or notification by the contract manager. The due dates of each quarterly contract usage report are April 30, July 31, October 31 and January 31. Quarterly usage reports must contain total dollar usage figures for each WSCA member-state (and non-member state), per product category, per manufacturer, respectively. Usage figures must be provided per maintenance option.
5. Change in Contractor Representatives
The State of Utah/WSCA reserves the right to require a change(s) in contractor representatives if the assigned representative(s) is not, in the opinion of the State of Utah's contract manager, meeting its needs adequately.
6. Website Development and Maintenance
Contractor must maintain said website and keep the information current and correct on a timely basis.
7. Rollout and Marketing
Contractor may conduct a marketing effort as described in Contractor's proposal.
8. Right to Publish

Contractor must secure prior approval from the contract manager for permission to release any information that pertains to the potential work or activities relating to this contract. Failure to adhere to this requirement may result in termination of the contract for cause.

9. Contractor's Scope of Equipment and Services
Contractor may only fill contract orders from the scope of equipment and services under contract. Any sale made under this contract by the Contractor of equipment, products or services not explicitly covered by the scope of equipment, products and related services described in Section E may result in contract termination for cause.

10. E-Rate Requirement
Contractor must participate in the Federal Communication Commission's E-rate discount program established under authority of the Federal Telecommunications Commission Act of 1996. Participation in, and implementation of, this program must be provided without the addition of any service or administration fee by the contractor.

11. Freight Terms of Sale F.O.B. Destination, Freight Prepaid
Contractor will ship all products F.O.B. destination, freight included in the product price. Contractor may not include freight charges on invoicing. Failure to comply with this requirement may result in contract termination for cause.

Whenever a procuring agency does not accept any product and returns it to the contractor, all related documentation furnished by the contractor shall be returned also. The contractor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the procuring agency. Contractor is responsible for the pick-up of returned equipment.

12. Price Guarantee Period
Percentage discount depth from list is not subject to a "price increase request" that would result in a less attractive discount; discounts may only be adjusted by the contractor to reflect a deeper discount(s). The discount is applied to manufacturers current published list price schedule(s).

Maintenance and any training related costs are also guaranteed for the entire contact.

13. Product Revision Requests
Contractor must submit updated price list(s) upon publication, or any other product model changes, addition of new products, product upgrades or services in a timely manner.

Contractor agrees to delete obsolete and discontinued products from the contract price list(s) on a timely basis. Major product model changes will be incorporated into the contract as soon as possible after product introduction, to be offered at the same rate of discount for the appropriate price list and its discount.

14. Maintenance of Current Price List with Discount(s) Applied
Manufacturer's price list(s) must be tailored for WSCA with the WSCA contract discount(s) applied; this must be created and maintained by the contractor on an Internet website hosted by the contractor, at no additional charge(s) to the State of Utah or WSCA. This website will be listed as a link from the WSCA website.

F. Contract Scope of Equipment and Related Services

Any sale by the Contractor of equipment, products or services not explicitly covered by the scope of equipment, products and related services described below (or included in Section A above) may result in contract termination for cause.

1. Price Proposals and Level Discounts

Baseline pricing is the List Price or MSRP published by Foundry Networks. The price list may be accessed and verified through the WSCA Foundry primary account representative referenced in section D.4.c., Attachment C: "Foundry WSCA Price List" in the WSCA RFP response or through the WSCA specific website set up by Foundry Networks.

It is Foundry's decision to offer a **37%** discount off of list price on all proposed hardware, regardless of type or category. The discount for all services and maintenance contracts is **25%** off of list price. Foundry will offer a **35%** discount on all services and maintenance contracts that are purchased for a 4 year timeframe.

A. Cumulative Discounts & B. Additional Pricing Offers

Foundry Networks proposes the following for per transaction and cumulative volume discounts. Per transaction and cumulative discounts may be combined, but that discount may not exceed a combined total of 40% off of list price.

Large Per Transaction Additional Discounts

For any single order that exceeds \$500,000 Foundry will extend an additional 2% discount on hardware only. This discount is combined with the standard WSCA discount of 37%, totaling 39% off of list price.

For any single order that exceeds \$1,000,000 Foundry will extend an additional 3% discount on hardware only. This discount is combined with the standard

WSCA discount of 37%, totaling 40% off of list price.

Maintenance contracts written for 4 or more years will receive an additional 10% discount on top of the standard 25% discount, for a total of 35% off of list price.

Cumulative Volume Discounts

Once cumulative WSCA orders exceed \$5,000,000 an additional 1% discount will be applied to all future WSCA hardware orders for a total of 38% off list price.

Once cumulative WSCA orders exceed \$10,000,000 an additional 2% discount will be applied to all future WSCA hardware orders for a total of 39% off list price.

Once cumulative WSCA orders exceed \$15,000,000 an additional 3% discount will be applied to all future WSCA hardware orders for a total of 40% off list price.

2. Warranties Including Process

Product Warranty Guidelines

Warranty coverage for Foundry Networks products are described below. Additional support coverage can be purchased with your Foundry products. Please reference Attachment C: "Foundry WSCA Price List" annual service and maintenance costs beyond the standard warranty.

Standard warranty terms and conditions are outlined below.

Warranty Start Date

"Start Date" as used in this policy means the date this product is shipped from the manufacturing facilities of Foundry Networks, Inc.

Limited Hardware Warranty

Foundry Networks, Inc. ("Foundry") provides a one (1) year limited product hardware warranty to purchasers of Foundry products. Foundry warrants that the product hardware will be free from defects in materials and workmanship that result in a material deviation from the applicable published Foundry technical specifications ("Hardware System Failure"). Upon a Hardware System Failure, Foundry will repair or replace such product hardware within three (3) working days of its receipt of the failed hardware, if in advance of its receipt, such hardware (1) was evaluated by Foundry Technical Support in person or via telephone, and (2) received a Technical Support RMA number from Foundry. Further, the product hardware must be shipped, shipment pre-paid, to Foundry, and the RMA number must be clearly indicated on the shipping box and papers.

Limited Software Warranty

Foundry provides a ninety (90) day limited software warranty to licensees of Foundry software accompanying Foundry hardware. Foundry warrants that the media on which the software is delivered will be free of defects in material and workmanship for a period of ninety (90) days following delivery of the software to licensee. Foundry warrants that the software, when used in accordance with the terms of the Foundry software license, will operate substantially as set forth in the applicable Foundry Documentation for a period of ninety (90) days following delivery of the software to licensee.

Technical Support Access

During and up to 90 days from the warranty "start date", toll free phone support is offered 5 days per week (8:30am to 5:30pm Pacific Time, Monday through Friday, except holidays). Calls left after hours will be returned the next business day. Access to Technical Support after this 90-day warranty period is on a commercially reasonable basis (unless a TechNet Support Contract is purchased for all systems owned by the customer).

Software Updates

During and up to 90 days from the warranty "start date", software updates for system software and software products released by Foundry Networks are available by contacting Foundry Technical Support. System software updates include applicable minor releases (e.g. Release 2.0 to 2.1) to the Foundry Networks family of products as well as major feature releases (e.g. Release 2.x to 3.0). Customer must have access to the Internet for Web Browser or FTP downloads as directed by Technical Support. Software updates released after the initial 90-day warranty period are available as an upgrade product for the then applicable list price.

Hardware Repair Service

In the event of a hardware system failure past the first 30-days, but within the first year of ownership from the "warranty start date", the unit will be either repaired or at Foundry Networks' option, replaced with a new or reconditioned unit of equal or better value. This service requires a phone support evaluation of the failed system from Foundry Technical Support personnel, and the issuance of a Technical Support RMA number. The Customer must ship the failed unit, pre-paid, to Foundry Networks. The RMA number must be clearly indicated on the box and shipping papers. Failure to do so will result in delays. A repaired or replacement unit will be shipped at Foundry Networks' expense within 3 business days after receipt of the failed unit.

Advanced Hardware Replacement Service

Up to 30 days from the warranty "start date", Foundry Networks will provide an advanced hardware replacement unit, prior to the return of the failed unit, in the event of a hardware system failure. This service requires a phone support evaluation of the failed system from Foundry Technical Support personnel, and the issuance of a technical support RMA (Return Material Authorization) number.

An RMA issued by 12:00 (noon) Pacific Time will be shipped via overnight carrier that same day. An RMA issued after 12:00 PM Pacific Time will be shipped the following business day. Foundry Networks must receive the failed unit within 14 days after issuance of the RMA to avoid replacement charges, billed at the then current list price of the unit including installed options. A replacement unit may be a new or reconditioned unit of equivalent or better value. Saturday delivery and counter-to-counter service is available for an extra charge. Non-U.S. customers may experience additional transit time due to international customs requirements.

Warranty Limitations

Foundry's warranties as set forth herein ("Warranty") are contingent on proper use of the Foundry hardware and software ("Products") and do not apply if the Products have been modified without Foundry's written approval, or if the Products' serial number label is removed, or if the Product has been damaged. The terms of the Warranty are limited to the remedies as set forth in this Warranty. THIS WARRANTY IS PROVIDED IN LIEU OF ALL OTHER RIGHTS, CONDITIONS AND WARRANTIES. FOUNDRY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO THE SOFTWARE, HARDWARE, PRODUCTS, DOCUMENTATION OR FOUNDRY SUPPORT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. FOUNDRY DOES NOT WARRANT THAT ANY PRODUCTS WILL BE ERROR-FREE, OR THAT ANY DEFECTS THAT MAY EXIST IN ITS PRODUCTS CAN BE CORRECTED. IN NO EVENT SHALL FOUNDRY BE LIABLE FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, LOST PROFITS OR ANY OTHER SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST DATA), HOWEVER CAUSED WHETHER OR NOT FOUNDRY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

3. Technical Support Including Escalation Procedures

Foundry's Technical Support department provides support contract and warranty customers with the technical services needed to maintain networks, including documentation, release notes, software upgrades, MIBs and support FAQs.

Technical Support Contact Information:

support@foundrynet.com

408.207.1600

877.TURBOCALL (877.887.2622)

Escalation

Escalations are driven by the severity of the reported problem, time elapsed since the problem was reported to TAC and always by priority established by the customer.

Escalation Process

- 1. A call is placed to TAC and a TAC Call Coordinator opens a trouble ticket.**
- 2. A TAC Engineer is assigned the trouble ticket and works to resolve the reported problem. The TAC engineer also determines if the reported problem can be resolved in the timeframes outlined in this process or requires escalation and/or additional resources.**
- 3. The customer or caller should provide the TAC Engineer the following information in order to ensure the proper resources can be brought to bear on the reported problem in a timely and effective manner:**
 - a. Customer name
 - b. Contact information
 - c. Switch serial number
 - d. Problem description
 - e. Problem impact to production network
 - f. Device configuration files
 - g. Remote access methodology
 - h. Network diagram
- 4. TAC Engineer will call a TAC Manager to escalate the case.**
 - a. The TAC Engineer will approach the Duty Manager during normal business hours.
 - b. During Non-Business hours the TAC Engineer will escalate to the appropriate group Manager.
 - c. If the TAC Engineer cannot reach a TAC Manager, the TAC Engineer will contact the Director of TAC or the VP of Customer Service (whoever has the on-call responsibility that week).
 - d. The TAC Manager will immediately notify the SEM of the situation. The SEM will notify the Regional Sales Director of the situation.

- 5. The TAC Manager will determine (based solely on case severity) whether to engage the Escalation Engineer, Engineering, Regional Sales Engineering Manager (SEM). In addition, the TAC Manager will determine when to engage the appropriate additional technical or management resources, based on the guidelines.**

Severity Level Definitions

Priority 1: Network Down – an existing network is down or there is critical impact to the customer's business operations. Foundry and the customer will commit the necessary resources around the clock to resolve the situation.

Priority 2: Serious Degradation – operations of an existing network are severely degraded, or significant aspects of the customer's business operations are being negatively impacted by unacceptable network performance. Foundry and the customer will commit full-time resources during normal business hours to resolve the situation.

Priority 3: Performance impact – operational performance of the network is impaired, while most business operations remain functional. Foundry and the customer are willing to commit resources during normal business hours to restore service to satisfactory levels.

Priority 4: Information or Assistance – customer requires information or assistance on Foundry product capabilities, installation, or configuration. There is clearly little or no impact to the customer's business operation. Foundry and the customer are willing to provide resources during normal business hours to provide information or assistance as requested.

When to Escalate

- When a problem is critical to business operation such as a Severity 1 or 2.
- When the problem resolution time is too long
- Based on how the customer perceives the problem that is effecting their business

Please note:

Customers should not rely on electronic mail to submit Priority 1 or 2 issues to the Foundry Technical Assistance Center (TAC). Please call 1-877-TURBOCALL to get direct access to a TAC Call Coordinator who will engage a TAC Engineer live, 7x24, 365 days a year.

Technical & Management Escalation Guidelines

Severity Level	Time Frame	Technical Level	Management Notification Level
1	Immediate	TAC Engineer	TAC Manager Regional System Engineering Manager
	60 Minutes	TAC Escalation Engineer	Director of TAC Regional Sales Director
	90 Minutes	TAC Engineers Sustaining Engineering	VP of Customer Service Regional VP of Sales
	120 Minutes	TAC Engineers Sustaining Engineering Hardware/Software Developers	VP of Business Unit SVP of Worldwide Sales
	4 Hours	TAC Engineers Sustaining Engineering Hardware/Software Developers	CEO/President
Severity 1 Goal is to resolve or mitigate the issue in 4 hours or less.			

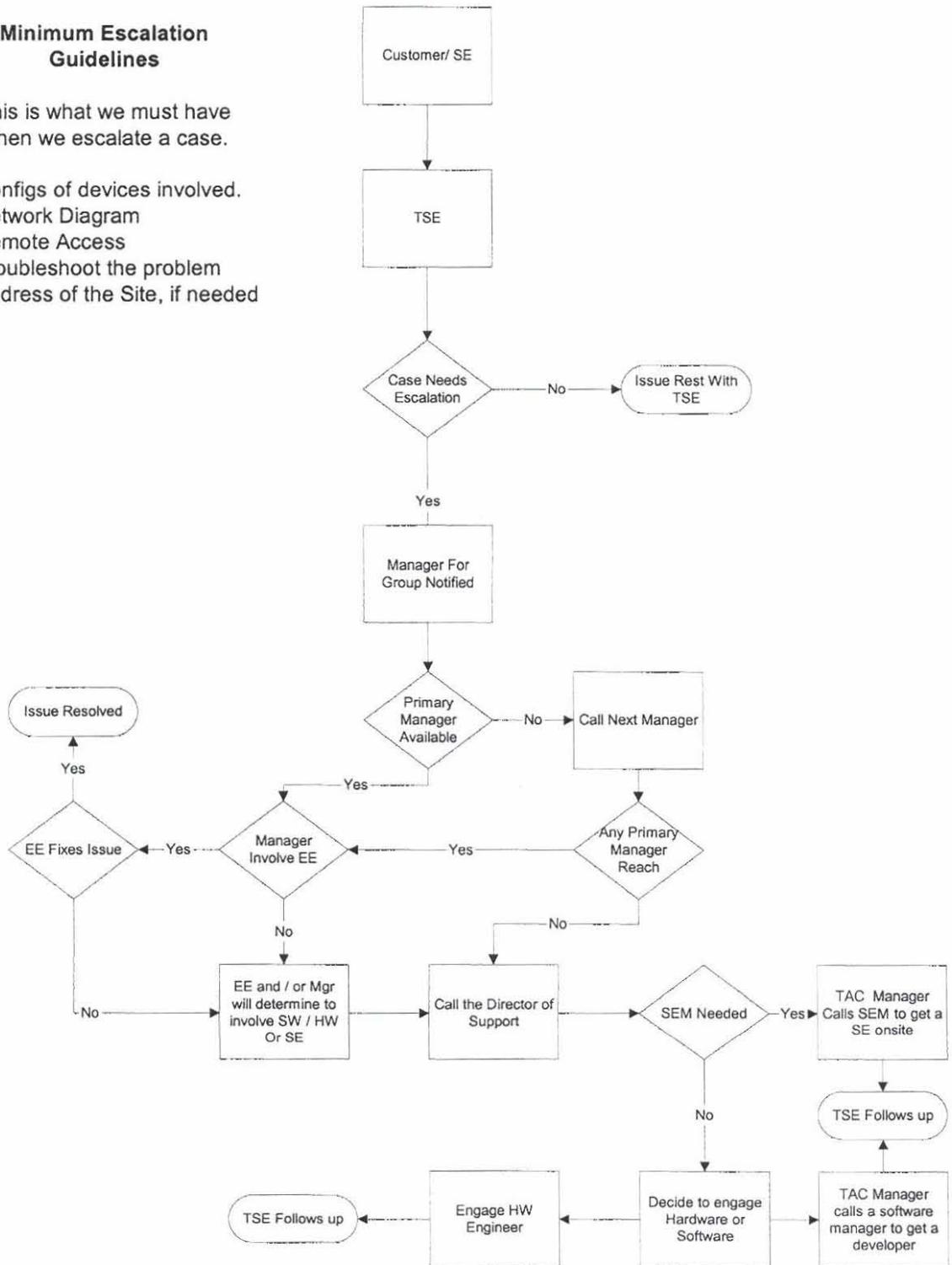
Severity Level	Time Frame	Technical Level	Management Notification Level
2	60 Minutes	TAC Engineer	TAC Manager Regional System Engineering Manager
	120 Minutes	TAC Escalation Engineer Sustaining Engineering	Director of TAC Regional Sales Director
	4 Hours	TAC Engineers Sustaining Engineering Hardware/Software Developers	VP of Customer Service Regional VP of Sales VP of Customer Service & Regional VP of Sales
	8 Hours	TAC Engineers Sustaining Engineering Hardware/Software Developers	VP of Business Unit SVP of Worldwide Sales CEO/President
Severity 2 Goal is to resolve or mitigate the issues within 8 hours.			
3	3 Days	TAC Engineer	TAC Manager System Engineering Manager
4	3 Days	TAC Engineer	TAC Manager Regional Sales Engineering Manager

Technical Support Escalation

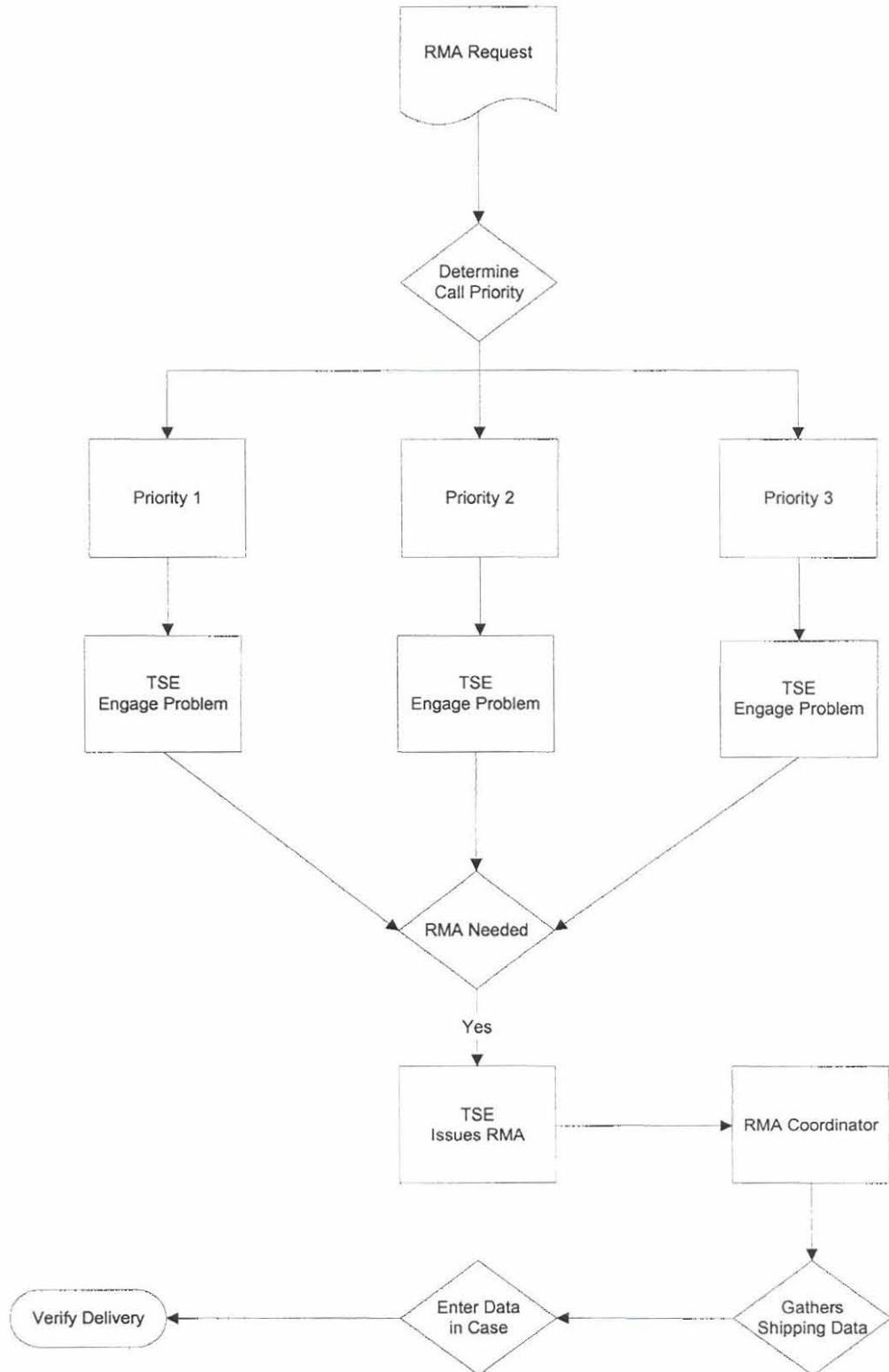
Minimum Escalation Guidelines

This is what we must have when we escalate a case.

1. Configs of devices involved.
2. Network Diagram
3. Remote Access
4. Troubleshoot the problem
5. Address of the Site, if needed



RMA Process



4. Maintenance & Support

For warranty information, please reference Section III, Item #10 titled "Warranties" for information regarding Foundry's official warranty terms and conditions. At Foundry, customer satisfaction is the most important aspect of our job. We are dedicated to helping you gain a competitive advantage through the delivery of high performance services.

Our service and support organization is a strategic asset for Foundry. This team of experts is led by seasoned industry veterans and fully staffed with highly knowledgeable network engineers. Our engineers have an average of 10 years of experience, and we have specialists in switching, Internet routing, security, wireless LAN, and application switching. We also train our partners on Foundry products to ensure that all technical personnel have the knowledge required to support our customers' networks. Because of this knowledge and expertise, we are able to respond and resolve customers' network issues quickly.

Foundry offers the people, processes, and tools you need to maximize network uptime, availability, and performance. Our flexible service offerings are tailored to each customer's unique and specific requirements. We offer Web-based support, remote technical support, hardware repair and replacement, and on-site service. Foundry's Web-based support gives customers easy access to critical information 24 hours a day, 365 days a year. Within the Foundry Knowledge Portal, customers can access the full library of technical documentation for maintaining their Foundry powered network, check on the status of an existing support question, and open a case with a certified and skilled support professional.

In addition to two fully staffed, highly technical call centers in San Jose, CA, and Tokyo, Japan, Foundry has technical support resources in all of its offices worldwide. In addition, Foundry has eight Centers of Excellence (CoE) locations around the world that are major customer demonstration centers, regional support hubs, and customer briefing centers. Foundry's Centers of Excellence are fully equipped to demonstrate Foundry's award-winning high performance LAN and LAN/WAN products and to support interoperability testing and hands-on training for customers. The centers allow Foundry to continue to deliver superior customer service and quality products to our growing global installed base.

We also collaborate with global service partners to deliver quality, on-site service in key regions around the world. Our partners participate in rigorous Foundry training to gain the necessary knowledge to support our diverse customer base. Foundry also maintains well-stocked parts depots in key locations around the world and a global logistics system to manage the inventory. This focus on global distribution means that we can deliver new devices to our customers quickly—regardless of where our customers are located.

Software updates enable customers to protect the investments they have made in Foundry equipment, and updates optimize network performance. Software upgrades deliver added functionality that increases the value of the Foundry equipment our customers purchase. A commitment to customer service, combined with our on-going investments in people, process, and tools are the foundation that allows Foundry to deliver high-performance service. By combining Foundry's award-winning technology, 24-x-7-x-365 high performance service, and global presence, customers can stay ahead of their competition and be assured their network investment is providing maximum availability, reliability, and performance. Above and beyond the standard warranty, Foundry offers additional contracted maintenance offerings, giving our customers flexibility and choice regarding the maintenance of their network.

Pricing for these service programs can be found in Attachment C: "Foundry WSCA Price List"

Titanium Service Program

Foundry's Titanium level service programs are designed to provide you with the most comprehensive support available, both remote and onsite. It is available in key cities in the United States and around the world. WSCA entities may verify Titanium Service coverage in their location by contacting their Regional Sales Manager. The contact information for all Foundry Networks personnel located in WSCA member states is provided in Attachment K: "Foundry WSCA State Coverage".

Includes:

- Unlimited 24 X 7 X 365 live telephone/email/web access to Foundry technology experts
- Two-hour or four-hour advance hardware replacement
- Registered access to Foundry's support site
- Software updates and upgrades
- On-site repair technician
- Priority management escalation
- Quick response and resolution of your network issues
- Expert advice on Foundry-related network problems

Gold Service Program

The Gold service program is designed to provide you with a full range of services. It is available in the United States and key regions around the world.

Includes:

- Unlimited 24 X 7 X 365 live telephone/email/web access to Foundry technology experts
- Registered access to Foundry's support site
- Software updates and upgrades

- Next business day advance hardware replacement
- Quick response and resolution of your network issues
- Expert advice on Foundry-related network problems

Silver Service Program

The Silver service program is designed to provide you with all the tools needed to optimize network performance and uptime. It is available in the United States and key regions around the world.

Includes:

- Unlimited 24 X 7 X 365 live telephone/email/web access to Foundry technology experts
- Registered access to Foundry's support site
- Software updates and upgrades
- No charge hardware repair
- Critical information at your fingertips, 24 hours a day
- Venue for making non time-sensitive queries

Bronze Service Program

The Bronze service program is designed to ensure that your equipment remains up to date. Besides providing access to Foundry's Web-based support, you also get phone/email support in the event of a network issue. It is available in the United States and key regions around the world.

Includes:

- Unlimited 5 X 9 telephone/email support, 8:30 a.m. to 5:30 p.m. local time
- Monday through Friday (excluding holidays)
- Registered access to Foundry's support site
- Software updates and upgrades
- Quick response and resolution of your network issues
- Expert advice on Foundry-related network problems

5. Training and Additional Value Added Services

Foundry Networks partners with our worldwide customer base to ensure that their networks are strategically supported and implemented. We understand that our customers' networks are the lifeline of their organization and as such, it is our goal to be the networking infrastructure provider of choice for the world's leading enterprises and Internet Service Providers.

Foundry engineers are available to provide a multitude of services including consulting, network design, training, installation, and network troubleshooting in all 15 of the WSCA states. Services provided by Foundry engineers are available at a contracted rate of \$250/hour.

Foundry Networks offers training for the complete Foundry "Family of Iron" products. The courses are a mixture of lecture and lab exercises to ensure that

each participant understands the underlying theory and practical application of the Foundry FastIron, Turbolron, NetIron and BigIron switches and routers. A ServerIron specific course provides basic configuration and usage of the ServerIron product. The Foundry Networks Certification Program (FNCP) positions you as a leader in high performance networks by validating your technical excellence in planning, designing, configuring, and implementing solutions for your customers - whether they are corporate internal clients or external consulting clients. The FNCP is the first to validate knowledge across three networking areas: Enterprise Networking, Web Switching, and Internet Routing. Certification demonstrates the knowledge and skills required to build and support high performance networks consisting of Layer 2-7 network infrastructure, content delivery networks, and intranet and metro backbone.

Courses available include:

- Deploying MPLS Networks (TRNG-0640)
- Basic Switch/Router Configuration and Management (TRNG-0103)
- Introduction to Web Switching & Load Balancing (TRNG-0202)
- Advanced Switching / Routing Configuration and Management (TRNG-0405)
- IronView Network Management (TRNG-0503)
- Techniques in Advanced Server Load Balancing (TRNG-0240)

The schedule for the training courses is available online at the following URL:
<http://www.foundrynet.com/ss/training/training-schedule/>

List prices for training vary between \$1200.00 and \$3000.00 per course. Discounted pricing is available in Attachment C: "Foundry WSCA Price List"

Servicing Sub-Contractors (Resellers)

A list of the Servicing sub-contractors will be posted on the WSCA Website at www.aboutwsca.org and on the Contractor's network website. This list will be updated as changes are made.

Attachment B – WSCA Terms and Conditions

Standard Contract Terms and Conditions

Western States Contracting Alliance

Request for Proposal

PARTICIPANTS: The Western States Contracting Alliance (herein WSCA) is a cooperative group contracting consortium for state government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming. Obligations under this contract are limited to those Participating States who have signed (and not revoked) an Intent to Contract at the time of award, or who have executed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting award(s) will be permissive.

QUALITY ESTIMATES: WSCA does not guarantee to purchase any amount under the contract to be awarded. Estimated quantities are for the purposes of submitting proposals only and are not to be construed as a guarantee to purchase any amount.

SPECIFICATIONS: Any deviation from specifications must be clearly indicated by offeror, otherwise, it will be considered that the proposal is in strict compliance. When BRAND NAMES or manufacturers' numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the RFP states "No substitute". Proposals will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate proposals offering lower quality or inferior performance will not be considered.

ACCEPTANCE OR REJECTION OF PROPOSALS: WSCA reserves the right to accept or reject any or all proposals or parts of proposals, and to waive informalities therein.

SAMPLES: Generally, when required, samples will be specifically requested in the Request for Proposals. Samples, when required, are to be furnished free of charge *based on agreement from both parties*. Except for those samples destroyed or mutilated in testing, samples will be returned at a offeror's request, transportation collect.

CASH DISCOUNT TERMS: Offeror may quote a cash discount based upon early payment; however, discounts offered for less than 30 days will not be considered

in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.

TAXES: Proposal prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from sales taxes on sales within their state, the contractor shall add the sales taxes on the billing invoice as a separate entry.

MODIFICATION OR WITHDRAWAL OF PROPOSALS: Proposals may be modified or withdrawn prior to the time set for the opening of proposals. After the time set for the opening of proposals no proposal may be modified or withdrawn, unless done in response to a request for a "Best and Final Offer" from WSCA.

PATENTS, COPYRIGHTS, ETC.: The Contractor shall release, indemnify and hold the Buyer, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.

AWARD: WSCA may award multiple contracts as the result of this solicitation. Awards shall be made to the responsible offeror(s) whose proposal is determined to be the most advantageous to WSCA, taking into consideration price and the other evaluation factors set forth in the RFP.

NON-COLLUSION: By signing the proposal the offeror certifies that the proposal submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the Request for Proposal, designed to limit independent bidding or competition.

CANCELLATION: Unless otherwise stated in the special terms and conditions, any contract entered into as a result of this bid may be canceled by either party upon 60 days notice, in writing, prior to the effective date of the cancellation. Further, any Participating State may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the special terms and conditions of this solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of and Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order. Cancellation of the contract due to Contractor default may be immediate.

DEFAULT AND REMEDIES: Any of the following events shall constitute cause for WSCA to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract WSCA shall issue a written notice of default providing a period in which Contractor shall have an opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. If the default remains, after Contractor has been provided the opportunity to cure, WSCA may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages; 4. Suspend contractor from receiving future proposal solicitations.

LAWS AND REGULATIONS: Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

CONFLICT OF TERMS: In the event of any conflict between these standard terms and conditions and any special terms and conditions which follow; the special terms and conditions shall govern.

REPORTS: The contractor shall submit quarterly reports to the WSCA Contract Administrator showing the quantities and dollar volume of purchases by each agency.

HOLD HARMLESS: The contractor shall release, protect, indemnify and hold WSCA and the respective states and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, his employees or subcontractors or volunteers.

ORDER NUMBERS: Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

GOVERNING LAW: This procurement and the resulting agreement shall be governed by and construed in accordance with the laws of the state sponsoring and administering the procurement. The construction and effect of any Participating Addendum or order against the contract(s) shall be governed by and construed in accordance with the laws of the Participating Entity's State. Venue for any claim, dispute or action concerning an order placed against the contract(s) or the effect of an Participating Addendum shall be in the Purchasing Entity's State.

DELIVERY: The prices offered shall be the delivered price to any WSCA state agency or political subdivision. All deliveries shall be F.O.B. destination with all

transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance (*within 21 days after delivery for external damage and 30 days for any concealed damage*) when responsibility shall pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

WARRANTY: As used herein "Buyer" refers to any WSCA state agency or political subdivision. The contractor acknowledges that the Uniform Commercial Code applies to this contract. In general, the contractor warrants that: (a) the product will do what the salesperson said it would do, (b) the product will live up to all specific claims that the manufacturer makes in their advertisements, (c) the product will be suitable for the ordinary purposes for which such product is used, (d) the product will be suitable for any *special purposes* that the Buyer has relied on the contractor's skill or judgment to consider.

AMENDMENTS: The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA Contract Administrator.

ASSIGNMENT/SUBCONTRACT: Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the WSCA Contract Administrator.

NONDISCRIMINATION: The offeror agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The offeror further agrees to furnish information and reports to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Offeror agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This contract may be canceled if the offeror fails to comply with the provisions of these laws and regulations. The offeror must include this provision in very subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

SEVERABILITY: If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

INSPECTIONS: Goods furnished under this contract shall be subject to inspection and test by the Buyer at times and places determined by the Buyer. If the Buyer finds goods furnished to be incomplete or in compliance with proposal specifications, the Buyer may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Buyer, the Buyer may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Buyer's rights including the rights and remedies associated with revocation of acceptance under the Uniform Commercial Code.

PAYMENT: Payment for completion of an contract is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card".

FORCE MAJEURE: Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. WSCA may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

HAZARDOUS CHEMICAL INFORMATION: The contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

FIRM PRICE: Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of proposal opening. Prices must remain firm for the full term of the contract.

EXTENSION OF PRICES: In the case of error in the extension of prices in the proposal, the unit prices will govern.

PROPOSAL PREPARATION COSTS: WSCA is not liable for any costs incurred by the offeror in proposal preparation.

CONFLICT OF INTEREST: The contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any WSCA participants to any officer or employee of WSCA or participating states to secure favorable treatment with respect to being awarded this contract.

INDEPENDENT CONTRACTOR: The contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the states, except as expressly set forth herein.

POLITICAL SUBDIVISION PARTICIPATION: Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) of the WSCA participating states shall be voluntarily determined by the political subdivision. The contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

DEBARMENT: The contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by WSCA.

RECORDS ADMINISTRATION: The contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the contractor for costs authorized by this contract. These records will be retained by the contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later.

AUDIT OF RECORDS: The contractor agrees to allow WSCA, State and Federal auditors, and state agency staff access to all the records to this contract, for audit and inspection, and monitoring of services. *The scope of audits would be within the context of the contract.* Such access will be during normal business hours, or by appointment.

Revision date: September 14, 2006



STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT # 4
CONTRACT # AR214
Original Starting Date: 06/01/07
Expiration Date: 05/31/2010

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and
BROCADE COMMUNICATIONS SYSTEMS
INC

(Referred to as CONTRACTOR)

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Amended Expiration Date: 05/31/2012
Effective Date of Amendment: 05/31/2010
Potential Renewal Options Remaining: One (2) yr
The contract is amended to:

Please provide the following contact information.

Table with 4 columns: Name, Phone Number, Email Address. Rows include General Contact, Sales Contact, and Quarterly Report Contact, all listing Rich LeSueur and phone number 801-319-2956.

All other terms and conditions in the original contract remain the same.
IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

STATE OF UTAH

Contractor's Signature [Signature] Date 1/4/10

[Signature] Date 1/4/10
Kent Beers, Director
State of Utah Division of Purchasing

Contractor's Name (Print) Ian Whiting - Brocade

Title (Print) VP - NW Sales & Marketing

BROCADE LEGAL
By [Signature]
Date 1-4-10

Table with 4 columns: Purchasing Agent, Phone #, e-mail, Fax #. Row 1: Debbie Gunderson, (801) 538-3150, dgundersen@utah.gov, (801) 538-3882



Washington State Department of
Information Services

Amendment 10-01
to
Participating Addendum #AR214
under the
Western States Contracting Alliance Cooperative Contract
for
Data Communications Equipment

In accordance with the Sections entitled *Amendments* and *Assignment/Subcontract* of Participating Addendum #AR214 the ("Agreement"), this Amendment 10-01 is entered into by and between the State of Washington, **Department of Information Services** ("DIS") and **Brocade Communications Systems, Inc.**, ("Brocade"), successor in interest to Foundry Networks, Inc. ("Foundry").

DIS and Foundry entered into Participating Addendum #AR214 on December 20, 2007. On December 18, 2008, Brocade acquired Foundry.

The purpose of this Amendment is to assign and delegate to Brocade all rights, duties and obligations held by Foundry under the Agreement.

1. Brocade agrees to be bound by the terms and conditions of the Agreement and to perform all duties in accordance therewith. Brocade also assumes all obligations and liabilities of, and all claims against, Foundry under the Agreement as if Brocade were the original party to the Agreement.
2. Brocade warrants it is in a position and promises to fully perform all obligations that may exist under the Agreement.
3. Brocade ratifies all previous actions taken by Foundry pursuant to the Agreement and promises to give them the same force and effect as if the actions had been taken by Brocade.
4. DIS recognizes Brocade as Foundry's successor in interest in and to the Agreement and Brocade, through this Amendment, becomes entitled to all of Foundry's rights, titles, and interests in and to the Agreement as if Brocade were the original party to the Contract.
5. Nothing in this Amendment shall be construed as a waiver of any rights DIS may have against Foundry or Brocade.
6. Brocade agrees that DIS is not obligated to reimburse it or Foundry for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from Brocade's acquisition of Foundry or from this Amendment, other than those that DIS in the absence of the transfer or Amendment would have been obligated to reimburse under the terms of the Contract.
7. DIS hereby recognizes Brocade as Foundry's successor in interest in and to the Agreement.
8. The term "Contractor," as used in the Agreement, shall now refer to Brocade.

All other provisions of the Agreement shall remain in full force and effect.

This Amendment shall be effective December 18, 2008, regardless of the dates of signature below. The persons signing below warrant that they have the authority to execute this amendment on behalf of their respective parties.

APPROVED

State of Washington
Department of Information Services

Scott Smith
Signature

Scott Smith
Print or Type Name

Planning and Design Manager 10/6/09
Title Date

APPROVED

Brocade Communications Systems, Inc.

Richard Deranleau
Signature

Richard Deranleau
Print or Type Name
VP Finance & CFO

9-24-09
Title Date

BROCADE LEGAL
By AR
Date 9-23-09





**Amendment 10-02
to
Participating Addendum #AR214
Under the
Western States Contracting Alliance Cooperative Contract
for
Data Communications Equipment**

This Amendment 10-02 to Participating Addendum AR214 is entered into by and between the Department of Information Services (DIS), an agency of the state of Washington, and Brocade Communications Systems, Inc. (Contractor).

The parties agree to amend Contract as follows:

The purpose of this Amendment is to include the standard contract provisions applicable when funds from the American Recovery and Reinvestment Act (ARRA) are being used. These provisions have been approved as to form by the Office of the Attorney General for the State of Washington. Purchasers shall clearly designate when ARRA provisions apply on the Purchase Order, Statement of Work or other Order Document provided to the Contractor to assure Contractor has notice that the Purchase is governed by the applicable ARRA contract provisions below.

The parties hereby agree to add after Section 24, a new Section 25:

25. American Reinvestment and Recovery Act of 2009 Requirements

1. Recovery Act Reporting Requirements; Section 1512(c) of the Recovery Act (if applicable).

Contractor acknowledges and agrees that the American Recovery and Reinvestment Act of 2009, hereinafter "Recovery Act" places great emphasis on accountability and transparency in the use of taxpayer dollars. Among other things, it creates a new Recovery Accountability and Transparency Board and a new website -- Recovery.gov -- to provide information to the public, including access to detailed information on grants and contracts made with Recovery Act funds.

Purchasers who are recipients of Recovery Act funds must comply with the Recovery Act's extensive reporting requirements, including quarterly financial and programmatic reporting due within 10 calendar days after the end of each calendar quarter. Purchasers will require periodic reports from its sub-recipients in order to fulfill its reporting obligations. Contractors receiving Recovery Act funds may expect that a standard form(s) and/or reporting mechanism will be made available at a future date.

Contractor agrees to provide to Purchasers all reports, documentation, or other information, as may be required by the Purchaser, to meet reporting obligations under the Recovery Act. Contractor's receipt of funds is contingent on Contractor meeting the reporting requirements of Section 1512.

Additional instructions and guidance regarding the required reporting will be provided as they become available. For planning purposes, however, Contractors receiving Recovery Act funds should be aware that Recovery Act section 1512(c) provides:

Recipient Reports- Not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to that agency that contains—

- (1) The total amount of recovery funds received from that agency;
- (2) The amount of recovery funds received that were expended or obligated to projects or activities; and
- (3) A detailed list of all projects or activities for which recovery funds were expended or obligated, including:
 - (a) The name of the project or activity;
 - (b) A description of the project or activity;
 - (c) An evaluation of the completion status of the project or activity;
 - (d) An estimate of the number of jobs created and the number of jobs retained by the project or activity; and
 - (e) For infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under the Recovery Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment.
- (4) Detailed information on any subcontracts or sub-grants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

2. Section 1512 of the Recovery Act: Registration with Central Contractor Registration (CCR) (if applicable)

Recipients of funds under the Recovery Act shall register with the Central Contractor Registration (CCR) database at www.ccr.gov. This ensures consistent reporting of data about each entity and thereby makes data more useful to the public. In order to register in CCR, a valid Data Universal Numbering System (DUNS) Number is required and should be included on the cover page or other designated place in the Contract.

3. Section 1602 of the Recovery Act: Preference for Quick-Start Activities (if applicable)

In using funds made available in the Recovery Act for infrastructure investment, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the enactment of the Recovery Act. Recipients shall also use funds in a manner that maximizes job creation and economic benefit.

4. Section 1604 of the Recovery Act: Limit on Funds (if applicable).

None of the funds appropriated or otherwise made available in the Recovery Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

5. Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act of 2009 (if applicable).

Contractor shall comply with Section 1605 of the Recovery Act unless (1) compliance has been waived by the Federal Agency providing the funds; or (2) compliance with the Recovery Act conflicts with an international trade agreement.

A. Section 1605 of the Recovery Act provides:

Use of American Iron, Steel, and Manufactured Goods.

- (a) None of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.
- (b) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that:
 - 1. applying subsection (a) would be inconsistent with the public interest;
 - 2. iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - 3. inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.
- (c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.
- (d) This section shall be applied in a manner consistent with United States obligations under international agreements.

B. International Trade Agreements.

Contracts for the procurement of goods and services in the amount of \$528,000 or more and for construction services in the amount of \$7,443,000 or more are covered by an international trade agreement and are therefore not subject to Section 1605.

C. Waivers.

Contractor shall provide Purchaser with information and applicable supporting data as may be required by Purchaser to support any request for waiver of compliance with Section 1605 (b) of the Recovery Act. The following applies to requests for waivers submitted to Purchaser:

- (a) Definitions.

"Manufactured good" means a good brought to the construction site for incorporation into the building or work that has been;

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

"Public building" and **"Public work"** means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

"Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Domestic preference.

(1) This award term and condition implements Section 1605 of the Recovery Act of 2009 by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) of this term and condition.

(2) This requirement does not apply to the material excepted by the Federal Government.

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this term and condition if the Federal Government determines that:

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act.

(1)(i) Any request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this term and condition shall include adequate information for Federal Government evaluation of the request, including—

- (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
- (B) Unit of measure;
- (C) Quantity;

- (D) Cost;
- (E) Time of delivery or availability;
- (F) Location of the project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this term and condition.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this term and condition.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the Contractor will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is non-availability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the Contractor shall adjust the award amount or redistribute budgeted funds in accordance with requirements adopted pursuant to the Recovery Act.

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) Data. To permit evaluation of requests under paragraph (b) of this term and condition based on unreasonable cost, the following information and any applicable supporting data based on the survey of suppliers should be provided to Purchaser:

Construction material description	Unit of measure	Quantity	Cost (dollars) *
Item 1:			
Foreign steel, iron or manufactured good			
Domestic steel, iron or manufactured good			
Item 2			
Foreign steel, iron or manufactured good			
Domestic steel, iron or manufactured			

good			
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[List name, address, telephone number, email address, and contact for suppliers surveyed.]

[Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

6. Wage Rate Requirements under Section 1606 of the American Recovery and Reinvestment Act of 2009 – Davis-Bacon Act (if applicable).

All laborers and mechanics employed by Contractor and subcontractor on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (Davis-Bacon Act). With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See U.S. Department of Labor, Wage and Hour Division website at <http://www.dol.gov/esa/whd/contracts/dbra.htm> . Wage determinations can be found at <http://www.wdol.gov>.

The Contractor shall include this provision and require this provision to be contained in all subcontracts for work performed under this Contract.

The work performed by this Contract may also be subject to the State's prevailing wage laws, Chapter 39.12 RCW. The Contractor is advised to consult with the Washington State Department of Labor and Industries to determine the prevailing wages that must be paid.

7. Non-supplanting of State and Local Funds (if applicable).

Contractors must use federal funds to supplement existing State and local funds for program activities and must not replace (supplant) State or local funds that they have appropriated or allocated for the same purpose. Potential supplanting will be the subject of monitoring and audit. Violations may result in a range of penalties, including suspension of current and future funds under this program, suspension or debarment from federal grants, recoupment of monies provided under a grant, and civil and/or criminal penalties. For additional guidance regarding supplanting, refer to the information provided at <http://www.ojp.usdoj.gov/recovery/supplantingguidance.htm>.

8. Protection of Whistleblowers (if applicable).

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct,) a court or grand jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- Gross mismanagement of an agency contract or grant relating to covered funds;
- Gross waste of covered funds;
- Substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- Abuse of authority related to the implementation or use of covered funds; or
- Violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

9. ARRA - LISTING RECOVERY ACT JOBS WITH THE EMPLOYMENT SECURITY DEPARTMENT (if applicable).

Purchases may be made under this Contract that are funded with federal stimulus funds (under the American Recovery & Reinvestment Act), which has strict reporting requirements for funds spent and jobs created or retained (See Exhibit A, attached and incorporated into this Contract as additional instructions). For all such purchases, all job openings created by the Contractor for this project must be listed with the WorkSource system (an affiliate of the Employment Security Department) before hiring; all hiring decisions also must be reported to WorkSource. In addition, all Sub-Contractors hired by the Contractor also must be required to list jobs and report hiring results to WorkSource. Existing Contractor or Sub-Contractor employees who are retained using funds from this project also must be reported to WorkSource.

WorkSource will pre-screen and refer qualified job candidates for the Contractor's consideration. The Contractor also has the discretion to use other, additional recruitment systems and retains the right to make all hiring decisions. To begin the listing and reporting process, contact the ARRA Business Unit at 877-453-5906 (toll-free), 360-438-4849 or ARRA@esd.wa.gov.

All other terms and conditions of the original Contract, as amended, shall remain in full force and effect.

This Amendment, effective upon the date of DIS' signature is executed by the persons signing below, who warrant, respectively, that they have the authority to execute it on behalf of the party indicated.

IN WITNESS WHEREOF, the parties have read and understand this Amendment 10-02, and by their signatures below, agree to each and every particular.

ACCEPTED
 Washington State
 Department of Information Services

Scott Smith
 Signature
 Scott Smith
 Print or Type Name
 Planning and Design Manager
 Title
 1/26/10
 Date

ACCEPTED
 Brocade Communications Systems, Inc.

[Signature]
 Signature
 IAN WHITING
 Print or Type Name
 SUP WW SALES & MARKETING
 Title
 12 JAN 2010
 Date



STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT # 7

CONTRACT # AR214

Original Starting Date: 06/01/07

Expiration Date: 05/31/14

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and

BROCADE COMMUNICATIONS SYSTEMS INC

(Referred to as CONTRACTOR)

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Amended Expiration Date: Same

Effective Date of Amendment:

Potential Renewal Options Remaining:

None

The contract is amended to:

REPORTS AND FEES: The Contractor agrees to provide a quarterly administrative fee to the State in the form of a Check or EFT payment. The fee will be payable to the "State of Utah Division of Purchasing" for an amount equal to 1% of the net sales (net of any returns, credits, or adjustments) under this Contract for the period. If this fee is being added during a Contract renewal, the Contractors pricing to the State may be adjusted to offset for the equivalent fee amount. Payment(s) shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Fee Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

The Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the quantities and dollar volume of purchases by each agency and political subdivision. The report will be provided in secure electronic format and/or submitted electronically to the Utah reports email address salesreports@utah.gov.

Please provide the following contact information.

	Name	Phone Number	Email Address
General Contact	Tania Craythorne	408-333-6226	Tania.craythorne@brocade.com
Sales Contact	Donnelle Caulder	949-798-6501	dcaulder@brocade.com
Quarterly Report Contact	Tania Craythorne	408-333-6226	sledteam@brocade.com

All other terms and conditions in the original contract remain the same.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

STATE OF UTAH


Contractor's Signature

6 March 2012
Date


Kent Beers, Director
State of Utah Division of Purchasing

3/8/12
Date